

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
MAY 7, 2019**

**NOTICE FOR
APPLICANTS
6:00 pm**

At 6:00 pm, there were three board members present. Dyck made the announcement that any applicants had the right to withdraw their application due to the fact that there were only three board members present they would all three have to agree or [the application] would be denied. He said if they wanted to move forward, that was fine, but wanted to make [protocol] clear.

**CALL TO ORDER
6:00 pm**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. at the South Campus Building, 40 11th Street West, Suite 200, Kalispell, Montana. Board members present were Gina Klempel, Cal Dyck, and Tobias Liechti. Roger Noble was tardy. Ole Netteberg had an excused absence. Rachel Ezell, Donna Valade, and Mark Mussman represented the Flathead County Planning & Zoning Office.

There were 29 members of the public in attendance.

**APPROVAL OF
MINUTES
6:01 pm**

Klempel motioned, seconded Liechti, to approve the April 02, 2019 minutes as written.

The motion passed unanimously on a roll call vote.

**PUBLIC
COMMENT
(Public matters that
are within the
jurisdiction of the
Board 2-3-103
M.C.A)
6:01 pm**

None

**DISCLOSURE OF
BOARD
CONFLICT OF
INTERESTS
6:02 pm**

Liechti disclosed that he was employed by the owners of FCU-18-15 Evergreen Business Center, Inc. and therefore had a conflict of interest. Dyck asked for clarification of protocol if there was not a quorum due to a conflict of interest. Mussman said that they would need to postpone.

At this time, it was noted that there were only 3 board members present and with Liechti having a conflict of interest there would not be a quorum for the said file. It was noted by someone in the public that Noble was on his way. It was decided that they would postpone that particular file and hear the next one to give time for a quorum to be present.

LISA BATTEN
(FCU-18-10)
6:03 pm

A request from Lisa Batten for a conditional use permit to operate a commercial kennel on a lot located within the Echo Lake Zoning District. The property is located at 645 Echo View Drive, and is zoned SAG-5 (Suburban Residential). The property contains approximately 5 acres.

STAFF REPORT
6:03 pm

Valade reviewed the Staff Report FCU-18-10 for the board.

BOARD
QUESTIONS
6:07 pm

None

APPLICANT
PRESENTATION
6:07 pm

Lisa Batten, 645 Echo View Dr, presented her application. She wanted to be able to continue to do what she had been doing in Lake County. They had recently moved to Flathead County and needed to go forward with getting the appropriate permits. They currently do 8 kennels but wanted to drop down to five. She hadn't started construction but would like to build 5 kennels to continue doing what she was doing. She loved taking care of dogs.

BOARD
QUESTIONS
6:08 pm

Klempel asked the applicant how she would be able to keep the dogs from interacting with each other in the outdoor runs. Batten said she wanted the dogs to be able interact with each other. If the dogs do not get along with others, she would have them inside. She said, for the most part, she had a steady clientele so the dogs were used to each other and knew each other. She was familiar with the dogs and knew if they were going to be barkers or not.

PUBLIC
COMMENT
6:10 pm
(Noble arrived
at 6:13 pm)

Curtis Wallace, 1385 McCaffery Rd., spoke in opposition to the application. His objection was built on the regulations that stated the need to protect the esthetic resources of the county. He noted that protecting the esthetics meant the sound as well as the sight. He said he was kiddy-corner to their property. He was concerned about noise levels. He questioned the distinction between sound proofing and sound reduction and how it would be determined the appropriate amount of noise allowable. He was concerned about the general health and welfare of the community. He was concerned about the waste elimination and possible impact on the lake. He was also concerned about decrease property values. He wondered if it was the most appropriate use of land since it was a residential neighborhood and not a commercial neighborhood.

Trish Eaton, 1305 McCaffery Rd., spoke in opposition of the application. Her

property was adjacent to the subject property. The shop where the kennel would be located, was less than 25' from her property line and the out-door runs were even closer. She pointed out that, per the regulations, they were supposed to be at least 150' away from the property line if they were not sound-proof. She felt the burden of proof was on the applicant and felt that the answers [on the application and staff report] were vague and did not address some regulations. She said the hours of operation conflicted with what was on the application and what was told to BLUAC. She wanted to understand what the hours of operation were and when the dogs would be allowed to be in the kennels. She felt the information was not upfront and forthcoming. She was also concerned about the impact it would have on their property. She said she could smell the animal waste as it was now. She was also concerned about noise and, with the lake being so close, the sound traveling due to the unique geological features of the lake. Sound traveled more than other lakes. She asked, if it was approved, it be conditioned to protect the noise and setback be addressed.

Klempel asked what type of animal excretion she was referring to. Eaton said Batten had horses and at least 6 dogs. Klempel noted that stables were a permitted use in that zoning. Eaton said she did not have a problem with the horses, it was the smell. Klempel said it was SAG-5 and agriculture was never as pretty as people believed it was.

Joe Feise, 1257 McCaffery Rd., spoke in opposition of the application. He was sensitive to the noise issue. He said 4th of July was unbelievable with the amount of noise from fireworks. He did not see how it could be proven that it would *not* be noisy. He questioned how any noise limitation would be enforced and felt the neighborhood would have to police it. He asked that it not be approved.

Denise Grenier, 155 Echo Chalet Dr., spoke in opposition of the application. She stated the house was in a residential area and was not meant to be commercial. She was concerned in the decline of the property value. She had questions on how the CUP would be processed and enforced. She felt this was not the proper place for a commercial dog kennel in the valley.

Jill Curtis, 678 Echo View Dr., spoke in opposition of the application. She lived at the very end of the road of the subject property and was concerned about the increase of traffic that would increase an additional 22 trips and about 17% of what it was now. These statistics were taken into consideration after adding the employee and the clients that traveled on the road. She said the road and dust would be an issue. She said it wasn't truly a gravel road, instead it was a light fluffy dust. Even if people tried to go slow there was a significant amount of

dust that went up and over the lake. The dust was already an issue and it would only be worse. She asked, that if it were to go through, there be some type of dust abatement.

Sarah Taylor, 1312 McCaffery Rd., spoke in opposition of the application. She was concerned about noise. She said neighbors expected to “play by day and quiet by night”. She said dogs have barked in the past and had been mitigated by a conversation. She was also worried about waste disposal and that the lake was down the hill from the subject property.

Pete Carson, 674 Echo View Dr., spoke in opposition of the application. He has been at his property since 1971. His hope was that the area would continue to the maximum extent that it has been (i.e. isolation, remoteness, quietness and property value). He said two areas of concern was the noise and the property values decreasing. He trusted the board would evaluate the requirements to comply with the regulations.

Kevin Cummings, 205 Echo Chalet Dr., spoke in opposition of the application. He discussed the noise requirements and noted that the proposed location of the shop and kennel run would require them to sound proof. He pointed out there were set requirements by sound proofing and it could only be done by commercial companies. He felt that the staff overreached and the staff report was misleading. He said the noise would not meet the requirements as stated by the staff report and that insulation did not mean sound proofing.

Lance Morgan, 160 Conifer Lane, spoke in opposition of the application. He said it was not personal. He was concerned about decrease of property values.

Lauren Cummings, 205 Echo Chalet Dr., spoke in opposition of the application. She was concerned about the noise and presented a map of all the properties that would be affected by the kennel.

**APPLICANT
REBUTTAL
6:38 pm**

Batten said she did not have anything built yet so, when she did build, it would be built correctly. She said she will not have dog runs, there will be a yard that the dogs can play in. She can’t sound proof a yard but would do everything in her power to soundproof the building that the dogs would sleep in. She was not going to let the dogs run unattended, or all night long, for a number of reasons including they are noisy, they barked, and anything could happen. She did not want dogs getting hurt when she wasn’t looking.

She apologized that the website information was incorrect. She had tried to fix it but it had not been updated yet. She said she did not open until after 8:00 am and most people picked up their dogs later, if she was there.

She said that in regards to her horses, she just moved \$400 in horse manure recently to the landfill. She had to wait until her husband was home to do that because she was unable to operate the equipment. They do everything they can to take care of it. She implied that she would be able to take it to the dump every day.

She said in regards to commercial vs. residential, her next door neighbor had a business involving driving dump trucks. She said when most people thought of kennels, they thought of shelters, and she was not trying to do that.

She addressed the property line and said she would be willing to move the fencing to where it would be over 150' away from the property line. She said the dogs would not be left unattended at any time.

She said she was trying to do what was right but also make an income. She loved dogs and took good care of them. She had letters of reference that could vouch for that. The letters would also address the noise and smell concern.

**STAFF
REBUTTAL**
6:42 pm

None

**BOARD
DISCUSSION**
6:42 pm

Liechti said he was struggling with the sound proofing concern and that it only mentioned it would be insulated. The regulation clearly stated that if it was not going to be sound proofed, it needed to be at least 150' [from property line]. He pointed out that the proposal showed the dog run would be 10' away from the property line. He struggled with this.

Klempel was concerned about the same thing that Liechti was. Her biggest concern was not being able to be in compliance. Sound proofing and insulation were two entirely different things. She did not see anything in the application that said the building would be sound proofed.

Dyck asked for clarification from the director on if Noble could vote because he was late in the discussion. Mussman said that he might not want to vote on it

because, even though he read the staff report, all he had heard so far was the public testimony. Mussman suggested they take a break to review all the comments in front of them so that all submitted comments would be reviewed.

Noble asked, as a follow up, that Mussman clarify rule 40.10.01. Valade read the regulations pertaining to animals, facilities, and adjacent property line regulations.

Dyck asked Batten where the structure would be placed. She said about 25'-30' from the property line but nothing was set in stone. She did not have any fencing built nor had she insulated the shop yet. She was waiting for approval to see what she would be allowed to do.

Dyck asked for clarification on the regulations regarding being sound proof and if it was required that the dogs were boarded overnight and/or 150' away. Mussman said the way he read it was that it needed to be sound proof if the dogs were boarded overnight. Noble asked if that was for the whole facility. Mussman said yes, including outdoor pens. Dyck asked, "or 150' away?" Mussman said correct.

The board looked at the recommendations from BLUAC; that the doggie daycare would be limited to 3 days a week (referencing their F.O.F #11).

Klempel felt BLUAC did a good job. She was concerned on whether or not it would be economically feasible, by the time they sound proofed everything, to only operate 3 days a week.

Batten said she did not know what it would cost. If it was something she had to do, she would do it.

Dyck said that he was concerned about finding #10 and how it could be met, other than going to a sound proof structure with noise reduction of 10 decibels or less. It would be a pretty substantial noise reduction.

Liechti asked if she boarded dogs overnight. Batten replied yes she did in Lake County.

Dyck asked the director if this [application] had come before them due to a

violation. Mussman replied no.

Dyck wondered if they should add a condition #13 saying that it shall be 150' from the property line. Noble said that could be done after a motion had been made.

[board discussion was inaudible]

Mussman reminded them to speak loudly so all could hear.

Klempel said she was looking at the BLUAC's recommended conditions and asked how they could make condition #13 a requirement. Mussman said that, if the requirement was that it shall be sound proofed, then that would be every effort to mask the sounds beyond the property line. Klempel asked if that was as good as it could get. Noble said that he did not think BLUAC's condition #13 applied because condition #9 overrode it. Klempel said she was just taking it in to consideration.

**MAIN MOTION
ON TO ADOPT
F.O.F.
(FCU-18-10)
7:02 pm**

Noble made a motion, seconded by Leitchti, to accept Staff Report FCU-18-10 as Findings-of-Fact with a modification to condition #10.

**BOARD
DISCUSSION
7:02 pm**

Noble discussed amending Condition #10 to state that the animal excreta shall be removed from the site daily or as otherwise necessary to avoid the spread of objectionable odors, insects, pests, and objectionable surface drainage per Section 4.01.020 FCZR. (Findings of Fact #3 and #10)

**ROLL CALL TO
ADOPT F.O.F.
(FCU-18-10)
7:04 pm**

The motion passed 3-0 on a roll call vote. Noble abstained.

**MOTION TO
APPROVE
(FCU-18-10)
7:05 pm**

Noble made a motion, seconded by Liechti, to approve the FCU-18-10 application with conditions.

**BOARD
DISCUSSION
7:06 pm**

Klempel felt the application was incomplete and struggled with how it had been presented to the planning office and the board

Dyck recommended that condition #8 be "three days per week". Valade asked if that was towards the boarding or the daycare portion. Dyck asked for clarification on if they were dealing with two difference issues; being doggie daycare and boarding at the same time. Valade said she did both. Dyck said that was not clear to him. He asked about hours of operation and how that worked if she was requesting to be a 24/7 boarding operation. Valade said it was her understanding that the hours of the kennel would be when the clients could pick them up and/or drop them off.

Batten clarified that whether they were being boarded or utilizing the doggie daycare, the hours of operation referenced the time when clients could drop off and pick up. She said the daycare portion needed to be picked up no later than 5 pm. If they were boarding, arrangements would be made to pick up. Usually they are picked up prior to 5 pm. If they needed to pick up their dogs later, and she was there cleaning, they could make arrangements for pick up.

Dyck was confused how she could only operate 3 days a week but be boarding all the time. He said that it was not made clear to him her intentions.

He suggested adding a condition #13 that the kennels be 150' away from the property line and the building be sound proofed. He said that the daycare would have to be only 3 days a week. Noble said it was redundant. Dyck said he just wanted to make it clear.

Dyck addressed condition #8 and said it would need to be modified to make it clear that it would be limited to three days a week. Valade pointed out that there was a drafted condition from BLUAC with suggestions.

Noble questioned if they should look at BLUAC's suggested condition #13. Dyck and Noble discussed that it would need to be added to address that it needed to be 150' away from the property line. He said that it was redundant to condition #9 but he wanted to make it very clear.

Mussman said, to keep in mind, prior to being able to operate she had to meet all conditions. He said they could test the sound proofing for the overnight boarding.

**ROLL CALL TO
APPROVE
(FCU-18-10)
7:13 pm**

The motion was denied on a 2-1 roll call vote. Klempel dissented. Noble abstained.

**EVERGREEN
BUSINESS
CENTER INC.
(FCU-18-15)
7:15 pm**

A request from Evergreen Business Center, Inc., with technical assistance from APEC Engineering, Inc. for a conditional use permit to build duplexes on the 15 proposed residential lots of Hidden Buck Meadows Subdivision which was granted preliminary plat approval on March 12, 2019. The lot where the residential development will occur is located south of the Evergreen Jr. High School and west of 2150 Highway 2 East within the Evergreen Zoning District. The property contains approximately 4.73 acres and is zoned B-3 (Community Business).

**STAFF REPORT
7:16 pm**

Ezell reviewed the Staff Report FCU-18-15 for the board.

**BOARD
QUESTIONS
7:20 pm**

Noble asked staff to explain why there was only 1 egress and what the justification was for that. He wondered if it was allowed or if it was based on the number of lot size. Ezell said multiple subdivision accesses were looked at during the subdivision review. She said there were not enough lots to trigger the multiple degree standards. Valade said that they requested a variance and that it had already achieved preliminary plat status.

**APPLICANT
PRESENTATION
7:22 pm**

Marc Liechti with Apec Engineering, 75 Somers Rd., represented the applicant. He said they have had some hiccups but made it through with no opposition. Even the adjacent neighbors were in support of it. He said it was a slightly modified project that was resurrected after the economy. He said there was a lot of support to see some development in the Evergreen area. He also said that they would keep the access open and encourage other subdivisions to use it, especially during school days.

**BOARD
QUESTIONS
7:23 pm**

None

**PUBLIC
COMMENT**
7:24 pm

None

**BOARD
DISCUSSION**
7:24 pm

Klempel felt it was a clean application and had met their burden. She said Evergreen was growing and it was a nice touch for them.

Noble said that the fact it had been resurrected from what it was had a positive effect.

**MAIN MOTION
ON TO ADOPT
F.O.F.
(FCU-18-15)**
7:24 pm

Noble made a motion, seconded by Klempel, to accept Staff Report FCU-18-15 as Findings-of-Fact.

**ROLL CALL TO
ADOPT F.O.F.
(FCU-18-15)**
7:25 pm

The motion passed unanimously on a roll call vote.

**MOTION TO
APPROVE
(FCU-18-15)**
7:25 pm

Noble made a motion, seconded by Klempel, to approve FCU-18-15 application.

**ROLL CALL TO
APPROVE
(FCU-18-15)**
7:25 pm

The motion passed unanimously on a roll call vote.

**KARROW
PROPERTIES
LLC
(FCU-19-03)**
7:26 pm

A request from CROW, LLC, for a conditional use permit for a 'Cluster Housing Development' on property located at 1545 Karrow Avenue, Whitefish, MT within the Rural Whitefish Zoning District. The property contains approximately 15.26 acres and is zoned *R-2.5 (Rural Residential)*.

STAFF REPORT
7:27 pm

Valade reviewed the Staff Report FCU-19-03 for the board.

**BOARD
QUESTIONS**
7:31 pm

None

**APPLICANT
PRESENTATION**
7:31 pm

Jake Christiansen, 74 Lamb Lane, owned the property across the road and was the applicant. He said the goal for the property was to create some flexible housing relatively close to the City of Whitefish. They were trying to provide a more attainable cost with a shared septic and well and all the while keeping a country style living. They wanted to keep the 6 acre park for open space to give a buffer and habitat refuge. There as a trail that was drawn in there that would eventually connect to future City of Whitefish trails.

Yvonne May, 74 Lamb Lane, said they were trying to keep it a rural feel. She said each lot had an envelope where they could remove trees but had to keep the trees surrounding it to keep it a woodland feel.

**BOARD
QUESTIONS**
7:33 pm

Noble asked they clarify if they were proposing a shared septic field with individual tanks at each lot. Christiansen confirmed that was correct and added that there would be a dosing tank in the field. Noble pointed out that the area had a high ground water table.

Christiansen said they had done ground water monitoring last year. He said there was a higher knoll out there and showed [on the map] where the highest point of the property was. He said that they used an engineer for the ground water monitoring and based the septic proposal on what had been worked up.

Noble asked if the open space was a community thing or shared by the homeowners. Christiansen said it would be a homeowner's park to start with but, as the city grew, it would probably be annexed in to the city of Whitefish.

Noble asked about the trail on the map. May said they were kiddy corner the city maintenance yard. They had spoken with them about a trail. One of their thoughts was that they wanted to reduce the traffic in Whitefish. They had proposed a trail that went along the creek, and they wanted to encourage future subdivisions to do the same, to create a trail system that went all the way through. Noble asked if it was on the Whitefish Trails Plan and they said it had been discussed but nothing was set. Noble said it was very wet and would possibly be underwater. He had experienced it first hand while working out there.

Noble asked about the storm water plan and said it seemed to all run downhill and wondered where it was going to go. He said the soils out there were not adequate and there was no infiltration capacity. Christiansen said that would be addressed as they moved through the preliminary plat process. They discussed the results of the ground water monitoring.

Noble asked if the houses were going to be VRBO's or if there were any restrictions on them. Christiansen said their plan was for family and extended stays [accessory dwellings]. May said it was in the county so they would have the option to do a short term rental if correctly permitted to do so. Christiansen said that the goal was more residential with the idea of adding a revenue suite to offset some of the cost. May said there were restrictions on the size of the homes and the accessory dwellings.

Liechti asked why they did not want to connect to the City of Whitefish water, since there was an 8" city water main on Lamb Lane. Christiansen said they did not want to go in to the city regulations because it did not allow the homeowners much flexibility. He said that they had met with city officials to talk about what they wanted to do, as far as shared septs, wells, and driveways to create a more community feel, and their response was along the lines that it would be best if they didn't. He said that there was an existing well there that would need to be upgraded.

Liechti asked how he was going to get around the 500' rule to hook up to public water system. Christiansen said they had to show 3 times the cost. They would be able to show that the hookups would be 3 times more expensive than what they were proposing since they had the existing well.

**PUBLIC
COMMENT**
7:42 pm

Michelle Tafoya with Tafoya Law Firm, PLLC, 1524 W. Lakeshore, was an attorney representing the South Whitefish Neighborhood Association. She had previously submitted a public comment for the board's review. She was not going to go into great detail on the comment but there was a lot to unpack. She clarified that upon further review, the staff report did say, in finding #8, that "sewer and water services appear to be adequate". She said that was not a complete finding of fact but was a conclusory finding of fact, but it was not accurate for her to say that nothing was mentioned in regards to the matter. That led her to the problem with the application in general, the regulations that allowed for the CUP permit to be approved for a subdivision. She said if you went to the burden of proof requiring public services and facilities available and adequate, if they were thinking about connecting to city water, it would not be available to them unless they were wanting to be annexed. She said City of Whitefish was getting pretty aggressive before they were going to allow people

to hook up to city water. DEQ was not allowing for new applicants to be hooked up to city water due to the water supplies in the city. She said that [the application] was too vague at this point. The way they could get around it to make sure that there was really a plan was to go through subdivision review. That is what Montana Legislature envisioned when they allowed in statute for the local cluster option. She said if you looked at Title 76, Chapter 3, and part 5 of the Montana Code Annotated that was where the local cluster option was authorized. She said it had to be done, not in the zoning regulations, but within the subdivision regulations to allow a cluster development to be reviewed under the totality of all the other regulations that subdivisions were subject to. She said that was why this project did not fit. She said the previous file heard was the perfect example of a conditional use permit process; that it was a permitted use of a property that could be conditioned and was different than a different use that was by right. She said this was not asking for a different use but they were asking for a change in the minimum size of their lot to allow for higher density. She said that was another reason why the conditional use process did not fit here. She said Montana Legislature said regulations adopted for cluster development had to be adopted in the subdivision regulations. She said this board did not have the authority to even be considering this application because they don't approve subdivisions.

She said this proposal did not advance the purpose of cluster development option that the Montana Legislature sought to further. She said if you looked at MCA.76.03.102 it said that the purpose of the cluster development option was to minimize cost to local citizens. She wondered how the project was going to minimize cost to local citizens for infrastructure and other things. It was not mentioned in the application or the staff report. She wondered how it was going to promote the effective and efficient provision of public services. She did not see how this development was going to do that. She referenced MCA.76.03.103 and said that the applicant did not commit to not having VRBO, and if there were VRBOs, it could increase the capital and maintenance cost for things such as roads with more traffic.

She said the statutes in 76.03.103 said that the cluster development option was to allow lands to remain undeveloped. She said, in page 8 of the staff report, it stated that open space would result from the building envelopes established on individual lots and restricting the maximum size of the residential houses and the ADU. She said that was not open space nor undeveloped space. She said that area would have to be graded and it would have to be disturbed. That was not considered undeveloped.

She referenced MCA 76.03.509 and said it would need to be reviewed in subdivision regulations and the open space was a condition for approval. She

said that it was currently not a condition of approval for them to put the open space to be put in a conservation easement or otherwise, indefinitely, protect the open space area. She said, in fact, on page 16 of the staff report, she could not find any reference to having the applicant keeping the open space on a long term basis.

She said the board was being asked to rule on something where they did not have the authority to consider. She said it was a misrepresentation of state law.

Carin Cross, 1540 Karrow Ave., spoke in opposition of the application. She agreed with the City of Whitefish Planning and Building Department and felt this was not a proper clustering design. She also felt the subdivision was not keeping within the spirit and nature of the land and neighborhood. She was concerned that it could possibly devalue people's property.

**APPLICANT
REBUTTAL
7:54 pm**

May said she they were directed to do the CUP first and not have it as a part of the preliminary plat plan. She said there was going to be a lot of detail missing [at this point] that the board was asking for.

She said there was a plan in the CUP that designated the open space to never be subdivided. The fact that it was near the city, they didn't know if at some point the home owner's association would want to give up liability to the city. She said the park was behind all of the lots and explained their reasoning in designing it as so.

Christiansen said the designated space for open park was for everyone to enjoy.

May said it had just recently been changed to R-2.5 so there were not any similar developments yet. She pointed out what had been done in the area and what had been proposed. She said one of the reasons why they wanted to do the cluster was because they did not want to see a 2.5 chunked without any covenants. She explained their proposed setbacks to and proposed design of the cluster. She thought that the cluster could help hold the nearby property values. They were trying to keep it woody and rural feeling.

**BOARD
QUESTIONS
7:59 pm**

Dyck asked about the allowed square footage of the ADU. Christiansen said that it was livable space. The people building on the property would be responsible for meeting the conditions. May said they were saying it was a 1300' squared footprint but they could do a second floor. Staff and applicants

did confirm that it was based on livable square footage based on the regulations.

Dyck asked Mussman for clarification if the application was supposed to go to the BOA first or go through the subdivision process first. Mussman said that, this particular request, did not create any lots at all. If approved, it allowed the applicants to go forward with a subdivision design that had been approved under the cluster design. He said, as Valade had stated in her opening remarks, there were other uses on land (i.e. manufactured home park as an example) as a conditional use and would not create any lots but would allow the applicant to move forward with a subdivision design and go through the subdivision review process to create the spaces, including open spaces. He said this was the first step. Moving forward, they would submit all the information for a subdivision and at that point they would have this approval to reduce the number of lots (as long as the density remained the same) in to this configuration. He did not believe they would be able to accept this application through subdivision first because it did not come with any sort of PUD avenue to reduce the minimum lot size. He referenced the growth policy and said the cluster option in residential zones and agricultural zones were outlined in the zoning regulations. That was the first stop. It did not create any lots but allowed them to go forward with the subdivision process. He said there may be some issues with that but at this time could only speculate whether or not it could go to final plat.

Noble asked if the design in front of them could change once it went through the subdivision review process. Mussman said that typically the very first standard condition on a Conditional Use Permit (CUP) would be that the approval was based on substantial conformance with the application materials and site plan as submitted and approved by the Board of Adjustment and modifications by conditions. He said if there were minor modifications that did not change the effect of findings of fact and conditions, then those could probably occur. If there was anything major, they would have to come back through the process. Mussman said that if it was approved, they would note that it was approved and they would make sure the preliminary plat matched the plan that was submitted tonight.

Klempel shared the concern on why they were hearing this prior to subdivision review but felt satisfied with Mussman's answer. She felt the staff report was accurate.

**MAIN MOTION
ON TO ADOPT
F.O.F.
(FCU-19-03)
8:07 pm**

Liechti made a motion, seconded by Klempel, to accept Staff Report FCU-19-03 as Findings-of-Fact.

**ROLL CALL TO
ADOPT F.O.F.
(FCU-19-03)
8:07 pm**

The motion passed unanimously on a roll call vote.

**MOTION TO
APPROVE
(FCU-19-03)
8:08 pm**

Liechti made a motion, seconded by Klempel, to approve the FCU-19-03 application.

**MOTION TO ADD
CONDITION #10
8:08 pm**

Noble made a motion, seconded by Klempel, add condition #10 that would state:

If any modifications are made to the site plan layout and design provided in the CUP application the application will be reconsidered by the board.

**ROLL CALL TO
ADD
CONDITION #10
8:09 pm**

The motion passed on a 3-1 roll call vote. Liechti dissented.

**ROLL CALL TO
APPROVE
(FCU-19-03)
8:10 pm**

The motion passed unanimously on a roll call vote.

**OLD BUSINESS
8:11 pm**

A request by Forest Nelson on behalf of Gregory and Gina Nelson, for a conditional use permit for a Recreational Facility to allow for weddings on property located at 264 El Rancho Road within the Eastside Zoning District. The property contain approximately 75 acres. **This item was continued from the April 2, 2019 meeting. The public hearing portion for this agenda item had been closed.**

**STAFF REPORT
AND UPDATE
8:11 pm**

Mussman recapped where they had left off in the last meeting and what they would be addressing this evening, including:

- The use of portable toilets for sanitation.
- The status of the conservation easement.
- Dust mitigation strategies

- Ingress and egress issues.

He updated the board with the progress that had been made and the information that they had obtained and suggested conditions and modifications to be added if they were prone to approve the permit.

**APPLICANT
PRESENTATION**
8:11 pm

Forest Nelson, 264 El Rancho Rd., started with saying the portable toilet issue had been solved. He read a letter received from MLR. He also mentioned that he had done a lot of research in the different types of dust abatement. After trying to understand their environmental impacts, costs, and source ability, he came to the conclusion that gravel was the best option. This was due to the fact that neighbors' wells were nearby and they did not want to contaminate or cause water quality issues. The other options had a strong chemical smell and he didn't know if [the neighbors] would prefer a strong chemical smell or dust. They would add another layer of gravel. He also addressed the emergency egress and showed a map he had prepared where people could drive in a state of emergency. He described in great detail their plan, should there be an emergency, for people to get off the property.

**BOARD
QUESTIONS**
8:20 pm

None

**BOARD
DISCUSSION**
8:20 pm

Dyck said that they had been given a map with different options as to how one could access their property. He recalled that, where the original road was located, there was a lot of concern because of the dust. The concerns were also for the high traffic for those neighbors near the main entrance. Dyck wondered if the access were to be moved, further south, if it would be graveled or just using the existing farm land.

Nelson said the drawing represented the emergency egress only in an emergency situation. Nelson was under the impression, regarding the egress, they were discussing dust mitigation opportunities in regards to normal traffic in and out of the venue. That is how they came to the conclusion that gravel would be the ideal choice for dust abatement for the normal ingress and egress.

Mussman recalled that one of the issues from the last meeting was that the current configuration of the property has a flag pole [shape] where their existing driveway was. It ran between two pieces of property. He said the proposed drawing could be used as emergency egress ingress but to mediate the concerns heard last month, it could be conditioned that the primary access for the

wedding events could be located in a different location.

Dyck agreed.

Mussman asked Nelson which area had the big ditch. Nelson identified the area on the map. There was discussion as a board regarding where the ditch was located and would it be problematic for a different point of access. They discussed options they had for a primary access with the least impact in regards to dust. Mussman recalled a prior application for an event where the primary access was through a grass field. He said there was no reason why, for the wedding events, there would need to be any type of all-weather surface. He said that it could reduce the dust. There was an inherent danger of driving over grass during the fire season but that would be a lot easier to mitigate than trying to water down a .47 mile driveway. Mussman told the board, if they were prone to approve this, that would probably mitigate a lot of the concern mentioned at the prior meeting.

Noble asked why they didn't go further down the field [for an access]. Nelson said there was a huge ditch at the area Noble was inquiring about. Noble said they could use a culvert in the ditch and was not a big deal. Nelson said [his parents] were the ones spending the money so they would have to ask them. Mussman said not really because if it would mitigate the concerns brought up about traffic and dust, and if a point of access had to be created there, then a culvert in the drainage ditch and approach permit was doable.

Dyck pointed out that if they were to change it (and he referenced on the map where he was talking about) then it would be taking away the traffic and the dust away from the homes of concern.

Nelson pointed out a lot line to the south and said he did not know how that would factor in to the access. He pointed out some options.

Mussman said that the approval was specific to this particular piece of property [and would need to stay within the said property].

Nelson Sr. wanted to clarify that they owned the parcel that was in the application, however, his siblings owned the parcel to the south and he would need to get permission from them. He preferred to keep it north of the lot line.

Mussman said, to be specific, it could be that access for the wedding events “will be from El Ranch Rd. on the southern property boundary” and that would keep it on the property in question.

Dyck wanted to know how far away the property line was from the first house. Nelson estimated that it was about 200-250 feet away.

Nelson said if there was any clarification between ceremony traffic and support staff traffic, he didn’t know how that would be addressed. Mussman said they could fashion a condition that said all wedding guests are limited to a certain access, however, he felt there should also be a dust mitigation condition for other wedding support staff traffic who would use the regulated driveway. He said water could be the approved method.

Dyck asked if he was thinking the dust mitigation would need to go all the way to the venue or just near the homes affected in the area. Mussman said he thought that most of the .47 mile gravel driveway generated dust and therefore it would need to be the whole thing. It would have to be sprinkled and also a combination of watering the gravel driveway and reduced speeds. That was not something that we would be able to enforce but reduced speeds did tend to greatly reduce the dust.

Noble said that everyone was going to need to go down the same path because there was no way that you could control that.

Dyck said he felt that all people, regardless of who they were, would have to use the wedding access otherwise it would become too complicated and there was no way that they could keep track. The southern boundary is where they would need to address their dust abatement from El Rancho all the way to the wedding venue. They would also need a proper approach from the county.

Noble said that Rebecca Farms did the same thing every year. They put out an organic oil that took care of the dust. Nelson wondered what product it was but Noble said he was unsure, just that it was an organic oil. He said it was not ideal but it was a viable option. Dyck said there were viable options that were pretty decent to work with. He said in the long run it would be cheaper than trying to constantly water it on a super-hot day.

Dyck addressed with Mussman that the applicants had wanted to up the average attendance allowed from 125 to 150. Dyck brought up that it was not part of the

4 issues that were being addressed this evening. Mussman said the findings were not adopted last meeting so it could be addressed. He said that it was stated that the average attendance was 150.

Nelson said they were hoping that they would consider that the annual guest average be 150. He said if the guest rate was capped at 150, and that represented the bell curve, they would be chopping ½ of their potential market. If they averaged 150 there would be some weddings that could be small and some that could be large. It would protect their financial viability if there was an annual average of 150.

Liechti felt that might be a little difficult to track at the end of the year. Noble said they were not going to get in to that level of detail. Nelson said it would be easy. Dyck said they did not have the resources to go out each time and do a count. Noble said they were not going to get in to statistics. Mussman said that no matter what number they capped the amount of guests, the county would not be able to go out and monitor it. Noble asked if the request for 125 guests was a part of the original application and Mussman said in the application they had mentioned that the occasional non-commercial weddings ranged in attendance from 10-250. He averaged those two numbers and got 130. The applicant had stated that the average wedding in Flathead County was 150.

Dyck wanted to walk through the conditions that Mussman had proposed. They discussed this in great at length.

**MAIN MOTION
ON TO ADOPT
F.O.F.
(FCU-19-02)
8:41 pm**

Liechti made a motion, seconded by Klempel, to accept Staff Report FCU-19-02 as Findings-of-Fact.

**BOARD
DISCUSSION
8:41 pm**

Board discussed Finding of Fact #9 and whether or not it should be modified as a response to the letter received from Environmental Health. He read a suggested modification that stated:

The proposed use of portable chemical toilets to serve the wedding venue appears to be appropriate because the Flathead City-County Health Department allow chemical toilets for temporary events, and because no structures will be associated with the wedding venue, the use will be temporary.

**MOTION TO
ADMEND
F.O.F. #9
8:42 pm**

Liechti made a motion, seconded by Klempel, to accept modification of Finding of Fact #9 to state the following:

The proposed use of portable chemical toilets to serve the wedding venue appears to be appropriate because the Flathead City-County Health Department allow chemical toilets for temporary events, and because no structures will be associated with the wedding venue, the use will be temporary.

**ROLL CALL TO
AMEND F.O.F. #9
(FCU-19-02)
8:42 pm**

The motion passed unanimously on a roll call vote.

**ROLL CALL TO
ADOPT F.O.F.
(FCU-19-02)
8:42 pm**

The motion passed unanimously on a roll call vote.

**MOTION TO
APPROVE
(FCU-19-02)
8:43 pm**

Liechti made a motion, seconded by Klempel, to approve the FCU-19-02 application.

**BOARD
DISCUSSION
8:43 pm**

Mussman said they did not have to modify the guest number if they did not feel comfortable with that, it was just a suggestion. Liechti said that he was comfortable with the 150 although he did not know where the numbers came from. He did recall that the applicants had stated they wanted smaller weddings without amplified sound. Gina Nelson said she took 150 from the average that was given by the Montana Wedding Association. She also took an average from friend and family wedding sizes. The average wedding size clustered around that number and weddings that were much larger were rare. She basically wanted to be able to capture a reasonable portion of the market. She said they would prefer quant natural weddings that were not loud but that was just their personal preference. They would prefer acoustical music because there was not power and it was a softer sound. If amplification was needed it was usually at the part of the ceremony where they roast the bride and groom.

Dyck brought up condition #11 and they discussed what number of guests

allowed should be. They decided that it should read:

The wedding venue shall be limited to 150 guests.

They discussed condition #13 at length. It was decided that it should read as:

The applicant shall be limited to hosting two wedding events per month between May and August.

They discussed condition #19 at length. It was decided that it should read as:

All amplified music shall be located within an enclosed tent and shall not be allowed after 8:00 P.M. No wedding related activities are permissible after 11:00 P.M.

They discussed adding condition #20. It was decided it should read as:

Portable chemical toilets to serve a wedding event shall be limited to being on the site one day prior to the wedding and may remain on the site no longer than three (3) days after the event.

They discussed adding condition #21 at great length. Nelsons were concerned that they would be forced to break MLR's requirements because it would break the conservation easement. They discussed it further and it was decided it should read as:

Access off El Rancho Road for the wedding events, including guests and wedding support traffic, shall be located on the southern boundary of the subject property. An approach permit shall be obtained and shall be constructed to Flathead County Road and Bridge standards and be no less than 20 feet wide. The existing drive will only be available for emergency access during wedding events.

They discussed adding condition #22. It was decided it should read as:

Wedding event access shall be watered prior to, during, and after wedding events to mitigate dust.

**MOTION TO
AMEND
CONDITIONS
(FCU-19-02)
9:05 pm**

Liechti made a motion, seconded by Klempel, to amend conditions 11, 13, 19, 20, 21, and 22 as stated earlier.

**ROLL CALL TO
AMEND
CONDITIONS
(FCU-19-02)**
9:06 pm

Motion passed unanimously on a roll call vote

**ROLL CALL TO
APPROVE
(FCU-19-02)**
9:06 pm

Motion to approve FCU-19-02, as amended, passed unanimously on a roll call vote.

NEW BUSINESS
9:07 pm

None

ADJOURNMENT
9:07 pm

The meeting was adjourned at approximately 9:07 pm on a motion by Dyck. The next meeting will be held at 6:00 pm on June 04, 2019.



Cal Dyck, Chairman



Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED  2019